

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

MCCABE, HAMILTON & RENNY CO.,
LTD.

Employer

and

Case 20-RC-175876

WORKING FOREMEN'S AND
WORKING SUPERVISORS' UNION,
LOCAL 100, INTERNATIONAL
LONGSHORE & WAREHOUSE UNION
Petitioner

ORDER

The Employer's Request for Review of the Regional Director's Decision and Direction of Election is denied as it raises no substantial issues warranting review.¹

MARK GASTON PEARCE,

CHAIRMAN

LAUREN McFERRAN,

MEMBER

Dated, Washington, D.C., December 21, 2016.

Member Miscimarra, concurring in part² and dissenting in part:

¹ In denying review, we agree with the Regional Director that the Employer failed to establish that operations supervisors possess the authority to reward. In particular, we find unavailing the Employer's reliance on Vice-President Shelley Izuno's testimony that, when she was an operations supervisor, she sometimes let employees leave early and approved pay for a full shift. Without more, such testimony fails to indicate whether these were anything more than sporadic and isolated occurrences that are insufficient to confer supervisory status. See *St. Francis Medical Center-West*, 323 NLRB 1046, 1046-1047 (1997). Notably, Izuno conceded that she has never informed current operations supervisors that they have this authority.

Our dissenting colleague reiterates a position rejected by the Board in *Buchanan Marine, L.P.*, 363 NLRB No. 58, slip op. at 2 (2015), which we decline to revisit.

² I concur with my colleagues' decision to deny review regarding the supervisory status of the dispatchers. In addition, I agree with my colleagues that, under traditional community-of-interest factors, the petitioned-for unit of operations supervisors and dispatchers is appropriate, and I concur in denying review. I would not, however, apply *Specialty Healthcare* to determine whether the petitioned-for unit is appropriate. See generally *Macy's, Inc.*, 361 NLRB No. 4, slip op. at 22-23 (2014) (Member Miscimarra, dissenting).

This case involves the cargo-handling operations of an Employer based in Honolulu, Hawaii. The Employer's structure consists of, in relevant part, one Vice President of Operations and Safety Manager, four full-time operations supervisors, ten part-time operations supervisors, and about two-hundred longshoremen and stevedores. According to the Regional Director's analysis and decision, the Vice President of Operations and Safety Manager performs all supervisory functions for the Employer as to these employees. Unlike my colleagues, I would grant review because I think substantial issues exist as to whether operations supervisors have the authority to assign, responsibly direct, adjust grievances, and reward employees.

When evaluating the supervisory status of specific employees under Section 2(11) of the Act, I believe the Board in every case should take into account (i) the nature of the employer's operations, (ii) the work performed by the undisputed statutory employees, and (iii) whether it is plausible to conclude that all supervisory authority is vested in persons other than those whose supervisory status is in dispute. See *Buchanan Marine, L.P.*, 363 NLRB No. 58, slip op. at 5 (2015).

Applying those three factors to this case, I would grant review and consider whether it is plausible to believe that all supervisory authority is vested with the Vice President of Operations and Safety Manager vis-à-vis over two-hundred employees, whose complex work involves specific customer demands on a wide array of jobs with varying objectives, or whether, as the Employer contends, some of that authority is carried out by the operations supervisors. On this issue, I therefore dissent.

PHILIP A. MISCIMARRA,

MEMBER